



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

January 26, 1939

Hon. George H. Sheppard  
Comptroller  
Austin, Texas

Dear Mr. Sheppard:

Opinion No. O-209  
Re: Validity of the Milam  
County Special Tax  
Contract

Your letter of January 24, 1939, to Honorable Gerald C. Mann in regard to a tax contract between Milam County and Mr. W. C. Wallace has been received by this office. We understand that you desire our opinion on whether or not this contract is valid and should be approved by the Comptroller and the Attorney General.

This is not an ordinary contract whereby a person is to undertake to collect any and all delinquent taxes for the county, but it is a special contract under which Mr. Wallace is to represent the State of Texas in Milam County in certain particular suits in which the district and county attorney is disqualified to act because of having previously represented the defendants in these cases. We think that this contract can only be justified under the same law and same statutes that justify delinquent tax contracts in general, and one of those statutes is Article 7335 of the Revised Civil Statutes of Texas, which in part says:

"Whenever the commissioners court of any county after thirty days written notice to the county attorney or district attorney to file delinquent tax suits and his failure to do so, shall deem it necessary or expedient, said court may contract with any competent attorney to enforce or assist in the enforcement of the collection of any delinquent State and county taxes..."

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This statute clearly limits commissioners' courts entering into these contracts until "after thirty days written notice to the county attorney or district attorney to file delinquent tax suits and his failure to do so."

The contract in question does not show or recite that such notice has been given or that the notice has been waived, or no outside proof to that effect has been given us. The contract recites that it has been entered into because the district attorney is ineligible to represent the state on these cases; but we don't believe that that recitation obviates the necessity of the thirty day notice or a waiver from the district attorney waiving the notice. If the district attorney is ineligible to represent the state in these cases, then a thirty-day notice could be given him and he could fail to act, or he could waive the notice and if he desired to do so he could give his reasons by stating that he was ineligible to act.

For the reasons outlined above we give as our opinion that this contract does not appear to be valid, and the Comptroller and the Attorney General should not approve it.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (signed) Cecil C. Rotsch  
Assistant

CCR:BT

APPROVED:  
(signed) Gerald C. Mann

ATTORNEY GENERAL OF TEXAS